

Supreme Court, U.S.
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In the
Supreme Court of the United States

OCTOBER TERM, 1978

NO. 78 - 959

VINCENT R. PERRIN, JR.
Petitioner

versus

UNITED STATES OF AMERICA
Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF ON THE MERITS

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Appendix - Separately bound appendix filed with Original Brief on the Merits:	
1. Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Cir- cuit filed in the Supreme Court of the United States December 15, 1978.	
2. Opinion and order, including dissent of the Honorable Alvin B. Rubin, Circuit Judge, appearing on pages A-1 through A-22 of Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Cir- cuit herein filed, reported 580 F.2d 730.	

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3. Notice of order dated November 15, 1978 denying Petitioner Vincent R. Perrin, Jr.'s petition for rehearing in the United States Court of Appeals, Fifth Circuit appearing at pages A-23 and A-24 of Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
4. Legislative history of the Travel Act appearing at pages A-25 through A-51 of Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
5. In accordance with the requirement contained in Rule 36(1) of the Honorable Supreme Court of the United States Petitioner Vincent R. Perrin, Jr. adopts the relevant docket entries, relevant pleadings, and parts of the record to which Petitioner Vincent R. Perrin, Jr. wishes to direct this Honorable Court's attention, designated as Chronology and Course of Proceedings and Disposition in the Lower Courts, and in this Honorable Court.

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Respondent

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ON WRIT OF CERTIORARI FOR THE UNITED STATES'
COURT OF APPEALS FOR THE FIFTH CIRCUIT

AMENDED ORIGINAL BRIEF ON THE MERITS IN
BEHALF OF PETITIONER VINCENT R. PERRIN, JR.

Petitioner, Vincent R. Perrin, Jr., respectfully prays that this Honorable Court reverse the judgment of the United States Court of Appeals for the Fifth Circuit which affirmed judgment of conviction against Petitioner, Vincent R. Perrin, Jr., for the following reasons.

QUESTION PRESENTED

Whether "Commercial Bribery" of a private employee, defined as a misdemeanor in 14 Louisiana Revised Statutes 73, which crime, if any, was completed on July 16, 1975, is embraced within the meaning of the term "bribery" as used in the Travel Act, 18 U.S.C.A. 1952 (1976) insofar as Petitioner Vincent R. Perrin, Jr. is concerned.

STATUTORY PROVISIONS INVOLVED

18 U.S.C. 1952 (1976) provides:

"Interstate and foreign travel or transportation in aid of racketeering enterprise.

(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to -

(1) distribute the proceeds of any unlawful activity; or

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2) and (3), shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

(b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.

(c) Investigations of violations under this section involving liquor shall be conducted under the supervision of the Secretary of the Treasury.

As amended

Pub. L. 91-513, Title II Sec. 701 (i)(2), Oct. 27, 1970.
84 Stat. 1282." (Emphasis supplied)

14 Louisiana Revised Statutes 73 provides:

"Commercial Bribery.

Commercial bribery is the giving or offering to give, directly or indirectly, anything of apparent present or prospective value to any *private* agent, employee, or fiduciary, without the knowledge and consent of the principal or employer, with the intent to influence such agent's, employee's, or fiduciary's action in relation to the principal's or employer's affairs.

The agent's, employee's, or fiduciary's acceptance of or offer to accept, directly or indirectly, anything of apparent present or prospective value under such circumstances shall also constitute commercial bribery.

Whoever commits the crime of commercial bribery shall be fined not more than five hundred dollars, or be imprisoned for not more than six months, or both."

(Emphasis supplied)

STATEMENT OF THE CASE

Petitioner Vincent R. Perrin, Jr. was convicted by a jury in the District Court for the Eastern District of Louisiana for

having violated and conspiring to violate the Travel Act, 18 U.S.C. 1952 (1976). He was charged with having used interstate facilities to undertake a commercial bribery scheme, which occurred on and prior to July 16, 1975 in violation of the Louisiana Commercial Bribery Statute, 14 La. R.S. 73. The record shows that Petitioner Vincent R. Perrin, Jr., a subsurface geologist, had been employed for the first and only time by the "criminal shark" and "target" of the federal government on July 24, 1975, at which time he saw fleetingly for the first and only time before the Grand Jury investigation, one sheet of the alleged seismographic materials which he was later told (on August 4, 1975) that said seismographic materials were "stolen".

The transcript shows that co-defendants Levy and LaFont with the knowledge of Willis, organized a corporation, Black Gold Energy Resources, Inc., specifically designed to receive profits from the exploitation of stolen seismic exploration data. No proof exists that Petitioner Perrin had any knowledge whatsoever of said corporation, that it was to receive profits, as to who participated in the theft of said "seismographic data", as to who was the employer of the private person allegedly bribed by said alleged conspirators or any other details whatsoever in connection with the prior occurring alleged theft. The jury found Petitioner Vincent R. Perrin, Jr. guilty and he was sentenced to a term of two years which was suspended while Perrin was placed on probation.

Petitioner Vincent R. Perrin, Jr. appealed his case to the Court of Appeals for the Fifth Circuit. That Court, by a divided vote, found that commercial bribery was embraced by the term "bribery" as used in the Travel Act and that, therefore, petitioner was guilty of having violated that Act. Although this was a case of first impression for the Fifth

Circuit, this question has already been presented and decided by two other Courts of Appeals, *U.S. v. Brecht*, 540 F.2d 45 (1976 2d Cir.) Cert. den. 1977, 429 U.S. 1123, 97 S.Ct. 1160, 51 L.Ed. (2d) 573; and *U.S. v. Pomponio*, 511 F.2d 953 (1975) 4th Cir., cert. denied 423 U.S. 874, 96 S.Ct. 142, 46 L.Ed. 2d 105. The decisions in these two cases are conflicting. The Second Circuit found that the misdemeanor offense of commercial bribery is not within the meaning of the term bribery as used in the Travel Act and the Fourth Circuit found that "bribery" as used in the Travel Act does encompass the scheme of commercial bribery.

Commercial bribery is a statutory offense commonly (as in the case at bar) classified as a misdemeanor punishable by imprisonment of not more than six months and/or a fine of not more than \$500.00. It involves the bribing of private employees who are not public officials. Common law bribery involves the corruption and bribing of public officials in return for official action. The two are completely distinct crimes.

U.S. v. Pomponio, *supra*, a Fourth Circuit case, was the first case to deal with the issue of whether or not the term "bribery" as used in the Travel Act, 18 U.S.C. 1952(1976) encompasses the misdemeanor crime of commercial bribery. That Court held that to say that commercial bribery was not encompassed by the term "bribery" in the Travel Act would be "giving the term an unnaturally narrow reading." 511 F.2d at 957. Therefore, the Travel Act was held to encompass the misdemeanor of commercial bribery.

The Second Circuit in a later case, however, held to the contrary. *U.S. v. Brecht*, *supra*. After a lengthy summary of

the legislative history of the Travel Act, excerpts of which legislative history are annexed hereto as Appendix C, and the differences set forth in New York law between bribery and commercial bribery, the Court concluded that "we see no evidence of congressional intent to bring 'commercial bribery' within the scope of the Travel Act." 540 F.2d at 50.

The Court continued:

"The *Nardello* Court (*U.S. v. Nardello*, 393 U.S. 286 (1969) noted that the Travel Act was primarily designed to stem the clandestine flow of profits to organized crime** and gave 'shakedown rackets' and 'loansharking' as illustrations of methods used by organized crime to generate income. *Id.* at 295, 89 S.Ct. 534. To include 'commercial bribery' which typically is not a feature of organized crime and was not subsumed under the traditional offense of bribery, in the coverage of the Travel Act, simply because it contains the word 'bribery', would be to accept a literalism which the Court did not approve by its reasoning in *Nardello*. ***540 F.2d at 50.

It should be noted that the same differences as set forth in the *Brech* case in the New York Law between bribery and commercial bribery exist in Louisiana law. Title 14 of the Louisiana Statutes is entitled "Bribery and Intimidation" in which is proscribed the classic bribery of a public official. In the Louisiana Statutes the above referred to misdemeanor commonly called commercial bribery is included in the sub-part of Title 14 under "Offenses Against Property".

As is aptly noted in the *Brech* case, in 1960, the year before the Travel Act was enacted, only 13 states had "Com-

mercial Bribery" statutes and all were misdemeanors.

A majority of the hearing panel of the court below agreed with the former case, *U.S. v. Pomponio*, supra. Judge Thornberry reasoned that even though the primary impetus for the enactment of the Travel Act was to curb crimes of the underworld, it cannot be implied that only those kinds of crimes were the ones outlawed by the Travel Act. He also agreed with the *Pomponio* Court in stating that "bribery" should be used in its generic sense and not limited to its common law definition.

However in a strong dissent, Judge Alvin Rubin stated that a classic limitation on criminal law enforcement is that "there should be no punishment without prior statutory mandate." He continues harshly by saying:

"My brethren require four pages of dialectic to determine that the unadorned word 'bribery' in the Travel Act provides authority for the punishment by the Federal Government of 'commercial bribery.' The layman would scarcely choose so uncertain a route to define a clear proscription, nor indeed would the Second Circuit, *United States v. Brech*, 2d Cir., 1976, 540 F.2d 45, *Cert. denied*, 1977, 429 U.S. 1123, 97 S. Ct. 1160, 51 L.Ed. 2d 573." 580 F. 2d 730, at 738.

There have been a number of cases reported since 1971 which have pointed out the fact that this statute may, if not interpreted correctly, cause substantial interference in federal-state relationships. *Rewis v. U.S.*, 401 U.S. 808, 91 S.Ct. 1056, 28 L.Ed. 2d 488 (1971); *U.S. v. Archer*, 486 F.

2d 670 (2nd Cir., 1973).

The leading case of *Rewis v. U.S.*, *supra*, provides at page 812 that ambiguity concerning the ambit of criminal statutes should be resolved in favor of leniency, your Honors further observing that in the legislative history, Congress certainly implied that "an expansive Travel Act" would alter sensitive federal-state relationships and "could over-extend limited federal police resources...and would transform relatively minor state offenses into federal felonies." (401 U.S. 808 at P. 812).

The legislative history is clear that the Travel Act was a manifestation of Attorney General Robert Kennedy's attack on organized crime. The Travel Act was clearly designed to aim at those underworld leaders who direct business enterprises involving the proscribed activities and reside in one state but carry on their illegal activities in another. (See Appendix C attached hereto; see also *U.S. v. Nardello*, *supra* at P. 290; and *Rewis v. U.S.*, *supra* at P. 811).

The dissenting opinion of Circuit Judge Alvin B. Rubin correctly reflects the intention of Congress that the Travel Act should proscribe and be limited to the use of interstate facilities by vice barons, organized criminals and racketeers, in furtherance of one or more business enterprises, which business enterprises are specifically limited to gambling, liquor, narcotics, prostitution, and extortion or bribery and corruption of local public officials, and does not even include murder. (See Appendix C page 43)

Realizing that underworld criminal activity was the target of this legislation, an expansive construction of this Act

would not only place a heavy strain on federal-state relationships, but would transform traditionally local criminal conduct into federal crimes and require a substantial increase in federal police resources. (See *U.S. v. Bass*, *supra* at 349; *Rewis v. U.S.*, *supra* at 812).

An analysis of the provisions of the Louisiana Commercial Bribery Statute as it affects the instant case and is affected by the Travel Act indicates the elements of this misdemeanor to be as follows:

Commercial bribery is the giving of anything of apparent value (in the instant case, stock of a Louisiana corporation - not even known of by Petitioner Perrin) to any private employee (government informer Willis), without the knowledge and consent of the employer (Petty-Ray, New Orleans, Louisiana) with the intent to influence such private employees act in relation to the employer's affairs. Any commercial bribery which occurred was completed on July 16, 1975 when through an alleged conspiracy between government informer Willis and co-defendants Levy and LaFont, in return for stock in Black Gold Energy Resources, Inc., a Louisiana corporation, Willis stole from his employer, Petty-Ray, and on July 16, 1975 delivered to LaFont uninterpreted raw seismographic materials which were allegedly the property of Petty-Ray, and which seismographic materials remained in LaFont's possession until September 25, 1975. (See Indictment Count 1 Overt Act (2), Page 3; Second supplemental record on Appeal Page 7; Transcript Volume 14 Page 799) Petitioner Perrin, as the independent geologist consulted by the "criminal shark" referred to in the dissent of Circuit Judge Rubin, fleetingly saw one sheet of said alleged seismographic

material covering land in Louisiana when he first entered the picture in the office of co-defendant Levy on July 24, 1975, eight days after completion of any commercial bribery misdemeanor committed by Messrs. Willis, Levy and LaFont. Petitioner Perrin informed Messrs. Levy, LaFont and Willis that he could not interpret said materials but after an interpretation by a seismologist or geophysicist was obtained he would need gravity maps and ownership maps to verify the location on the ground of the materials depicted in said report. Petitioner Perrin did not know at that time that the alleged seismographic materials were stolen and was not so informed by government agent Willis until August 4, 1975 after Petitioner Perrin was persuaded by Willis at the International Trade Mart in New Orleans to select an interstate nexus to attempt to transform the completed intrastate commercial bribery misdemeanor into a federal felony under the Travel Act, nineteen days after the completion of the alleged commercial bribery.¹ (See Tape 6, page 87, lines 5 - 27; Tape 5, page 56; Transcript Vol. 13, pp. 807, 808; Transcript Vol. 15, p. 1276.)

1. The majority opinion of the Fifth Circuit erroneously states..."the evidence makes clear that Perrin knew the significance of selecting an out-of-state source for the gravity maps and that he fully appreciated the fact that an out-of-state supplier was less likely to notice leasing activities in northern Louisiana". (See Appendix, Petition for Writ of Certiorari, Page A-15, lines 27 - 33.) On the contrary, the evidence is unmistakably clear that at the time on August 4, 1975 when Perrin was persuaded by Willis to select the out-of-state source for the gravity maps he had not been told that the alleged seismographic materials which he fleetingly saw once on July 24, 1975 and could not interpret, were "stolen". Perrin received this shocking information from government informer Willis on August 4, 1975 after Perrin was induced to select the interstate nexus. The entirety of the colloquy, together with the time frame, are conclusively shown in the government's own exhibit. (T-6, Tape No. 6, Transcript thereof prepared by the government pp 87 and 88; Tape 5, p. 56; T. Vol. 13, pp. 807 and 808; T Vol 15,

Clearly Petitioner Perrin had no criminal intent to violate the intrastate Commercial Bribery Act nor did he criminally intend to nor did he enter any conspiracy or violate the Travel Act, as Petitioner Perrin did not learn until after his alleged selection of the interstate nexus that the alleged seismographic materials were stolen.

(Footnote 1 - continued)

p. 1276.)

Tape 6, August 4, 1975, pp. 87 and 88

WILLIS: If it ain't there, it ain't contoured. So, you know anything about these exchange services.

PERRIN: I really don't. I really don't.

WILLIS: *Here, look it over, I've got it marked.*

PERRIN: Uh, I've done some business with them, but uh, so infrequently I mean, hell, it's....

WILLIS: *Thev're right, they're right here.* (Pause)

PERRIN: What have you got on this one?

WILLIS: Nothing. I just had a pencil stuck in there.

PERRIN: Oh, you're the only ones who have....

WILLIS: Yea, just to mark it, but hell, that covers the whole world.

PERRIN: Yea, yea. That's right, that's right. One's as good as another.

WILLIS: Now you pick it.

PERRIN: I don't know.

WILLIS: *That's your department. We're to fill your request.*

PERRIN: Grav, Gravity Map Service doesn't advertise as big. If that means anything.

The record is incontravertible that neither Petitioner Perrin nor expert witness Aycock, nor any other consulting sub-surface geologist could have interpreted the stolen alleged seismicographic materials. Since Petitioner Perrin could not possibly have had any intent to commit commercial bribery or to select an interstate nexus to facilitate a crime, the Travel Act could not under any stretch of the imagination enmesh Petitioner, Vincent R. Perrin, Jr., nor could such a completed state misdemeanor form the basis of any Travel Act violation nineteen days after the completion of said state misdemeanor, unless proof was afforded by the government that Perrin, had the criminal intent to and did violate the State Commercial Bribery Statute, and prior thereto was a vice baron engaged in a "business enterprise" involving gambling, liquor, narcotics or prostitution, in one state, but directed same from another state where he resided, through the use of interstate facilities. No such proof exists and was not in fact made. (See Legislative History, Petition for Writ of Certiorari, Pp A-40 and A-41). Perrin's conviction is a

(Footnote 1 - continued)

WILLIS: Well

PERRIN: Now you're gonna have to check with them to see if they have it.

WILLIS: Yea.

PERRIN: We'll try Gravity Map first, and then Lyle if they don't have it.

WILLIS: Gravity Map and then Lyle?

PERRIN: Then Lyle.

WILLIS: Where's Gravity Map?

PERRIN: They're in Houston.

classic example of justice veiling "Guilt by Association" - first by accepting representation of the criminal shark - then being tried in the same forum with later admitted conspirators.

As is abundantly clear from the legislative history, murder would not be covered by the Travel Act, unless the government proved beyond a reasonable doubt that said murder was committed to further one of the referred to "unlawful business enterprises". Legislative History, Appendix, Petition for Writ of Certiorari, P. A-43, lines 6-14.

(Footnote 1 - continued)

WILLIS: All right. *And Lyle?*

PERRIN: ...is in Tulsa.

WILLIS: *This ad here?*

PERRIN: Yea.

WILLIS: OK. Gravity Map Number 1. Lyke Number 2. Yea. She's something else, too, and I'm... like I say, I'm ready to move on this...we've got to move fast or else Total-Leonard gonna beat us. You know what this deal is all about, so we gotta keep...

PERRIN: Yea, I, I know that angle of it, but ah, *beyond that I'm in the dark.*

WILLIS: Well, you know that, you know who's behind it.

PERRIN: *I think I do.*

WILLIS: It's CARLOS...

PERRIN: Uh huh.

WILLIS: ...if you don't know. I know too that you're supposed to handle the drilling or so I've heard.

It is also abundantly obvious from the legislative history that good reason exists for the number of decisions holding that isolated, minimal, inconsequential, incidental and non-essential use of interstate facilities do not constitute violations of the Travel Act. *Rewis v. U.S., supra*, *U.S. v. Altobella*, 442 F.2d 310 (7th Cir. 1971); *U.S. v. Isaacs*, 493 F.2d 1124 (7th Cir. 1974), *Cert. denied*, 417 U.S. 976; *U.S. v. Archer*, 486 F.2d 670 (2nd Cir. 1973); *U.S. v. Gooding*, 473 F.2d 425 (5th Cir. 1973).

The legislative history indicates that the scope of the Travel Act was limited to certain types of businesses that are known to be allied with organized crime and specifically limited to the four types of business specified in subsection B. (See Legislative History, Petition for Writ of Certiorari in Behalf of Vincent R. Perrin, Jr., pp. A-41, line 8, et seq. p. A-42, p. A-43.)

Also, sight must not be lost of the fact that as stated in its title The Travel Act proscribes "Interstate and Foreign Travel or Transportation in aid of Racketeering Enterprises", and as indicated throughout the legislative history, the Travel Act was principally designed to assist states in prose-

(Footnote 1 - continued)

PERRIN: No, the operating end of it.

WILLIS: Yea. But uh, well I'm waiting on my assurances now...

PERRIN: Uh huh.

WILLIS: ...from LEVY via...you know, MARCELLOSVia LEVY, as far as you know, that I don't get cut or whatever, it's just that I want you to understand that this data is good data, coherent, it's perfect, but it's stolen.

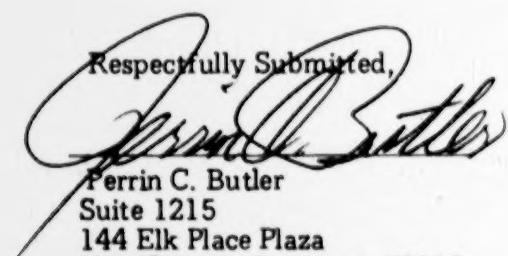
cuting vice barons who resided in one state and conducted racketeering enterprises in another state or other states with considerable, multiple, consequential, non-incidental and essential use of interstate facilities to conduct, foster and facilitate the racketeering enterprises proscribed by the Travel Act.

CONCLUSION

Petitioner, Vincent R. Perrin, Jr. is not a vice baron engaged in any of the proscribed racketeering business enterprises but was and is a consulting subsurface geologist who for 20 years enjoyed an excellent reputation, as testified to by U.S. District Judge Lansing L. Mitchell.

For the foregoing reasons it is respectfully submitted that the Honorable, Supreme Court of the United States reverse the judgment of the United States Court of Appeals for the Fifth Circuit which affirmed judgement of conviction against Petitioner, Vincent R. Perrin, Jr.

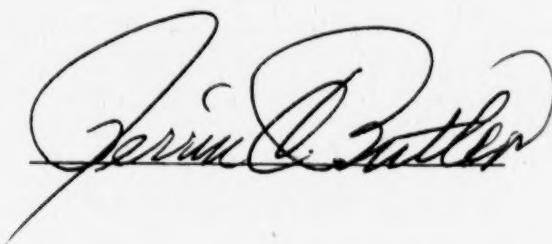
Respectfully Submitted,



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Counsel for Vincent R. Perrin, Jr.

CERTIFICATE OF SERVICE

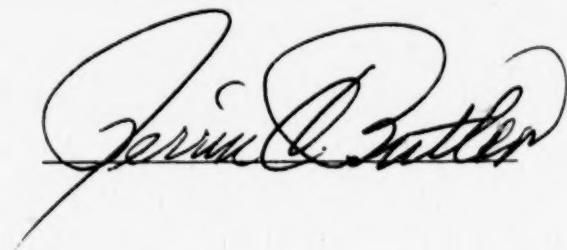
I certify that copy of the foregoing has been served upon Wade H. McCree, Jr., Solicitor General, Philip B. Heymann, Assistant Attorney General, T. George Gilinsky and James Roland Difonzo, Attorneys, Department of Justice, Washington, D.C., 20530 by depositing same in the United States Mail, properly addressed with adequate postage this 11th day of June, 1979.



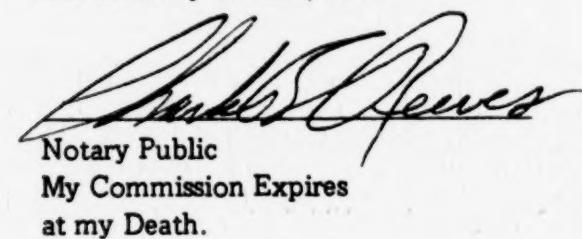
AFFIDAVIT OF SERVICE

State of Louisiana
Parish of Orleans

Personally appeared Perrin C. Butler who declared under oath that he is a member of the bar of the State of Louisiana, he is counsel of record for Petitioner, Vincent R. Perrin, Jr., he intends to enter his appearance in and become admitted to the Bar of the Supreme Court of the United States, that copies of the foregoing have been served upon Wade H. McCree, Jr., Solicitor General, T. George Gilinsky and James Roland Difonzo, Attorneys, Department of Justice, Washington, D.C., 20530 by depositing same in the United States Mail properly addressed with adequate postage this 11th day of June, 1979.



Sworn to and subscribed before me
this 11th day of June, 1979.



Notary Public
My Commission Expires
at my Death.